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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

: DECISION ON PETITION
: TO RESET PERIOD
: FOR REPLY

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA VA 22320

In re Application of
Yamaguchi, et al.
Application No. 09/853,158
Filed: May 10, 2001
For: **THIN-FILM MAGNETIC HEAD A MAGNETISM
INTERCEPTING LAYER PROVIDED BETWEEN
READ HEAD AND WRITE HEAD**

This is a decision on the petition filed on February 23, 2004, requesting that Office communication mailed on October 21, 2003 be re-mailed and for the shortened statutory period for response thereto, be reset.

The petition is **Dismissed as moot.**

Petitioner provided a statement that on February 12, 2004, a routine status check revealed that a final Office action had been mailed from the Office on October 21, 2003. Petitioner further states that they did not receive the Office action and that a search of the file jacket and docket records was performed. Furthermore, Petitioner provided copies of their docket records and referenced the docket records within the petition as to show how the Office communication would have been recorded had it been received.

Had the application gone abandoned, Petitioner's submission would have been sufficient to have revived the application, and had the final Office action mailed October 21, 2003 re-mailed. However, Applicants timely filed via petition for extension of time, a Request for Continued Examination (RCE) on April 21, 2004. The RCE request was filed with a proper submission.

706.07(h) [R-1] Request for Continued Examination (RCE) Practice states in part:

37 CFR 1.114. Request for continued examination.

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

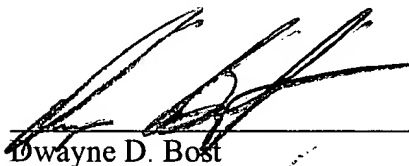
- (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
- (2) Abandonment of the application; or
- (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

V. AFTER FINAL REJECTION

If an applicant timely files an RCE with the fee set forth in 37 CFR 1.17(e) and a submission, the Office will withdraw the finality of any Office action to which a reply is outstanding and the submission will be entered and considered. See 37 CFR 1.114(d). If the application is under final rejection, a submission meeting the reply requirements of 37 CFR 1.111 must be timely received to continue prosecution of an application. In other words, the mere request for, and payment of the fee for, continued examination will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. [emphasis added]

Therefore, given that Applicants timely filed a proper RCE request, the petition to re-mail the final Office action of October 21, 2003 is moot. The finality of that Office action is withdrawn in response to the RCE request.

The application will be forwarded to TC2600's Technical Support Staff for entry of the RCE, submission and supplemental submission filed on May 7, 2004. From there the application will be forwarded to the examiner for action in due course.



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Communications